

# Q&A

## Technology and the Courts Conversation With Judge Ronald B. Robie



Judge Ronald B. Robie  
Superior Court of  
Sacramento  
County

*Judge Ronald B. Robie has spent much of his career on the bench not only adjudicating cases but also working to increase efficiency within the court system. Technology has played an important role in his drive to improve judicial efficiency and to make the courts more responsive to the people they serve.*

*Judge Robie has served as an educator in the field of court technology through the California Center for Judicial Education and Research (CJER). He has chaired CJER's Computer Course Planning Committee and has taught a course called Advanced Computer Applications for Judges.*

*In addition to providing educational assistance to his colleagues, Judge Robie has been a member of many organizations that seek to improve judicial administration. He served on the California Judges Association's Executive Board (as chair of its Technology Committee), the Federal State Judicial Council, and the Judicial Administration Institute of California.*

*Judge Robie began his judicial career as a municipal court judge in Sacramento County in 1983 and was elected to the superior court in 1986. In 1999 Chief Justice Ronald M. George appointed him to the Judicial Council, where he now serves as liaison to the council's Court Technology Advisory Committee. Court News spoke with Judge Robie about court technology and his work on the committee.*

### **How would you characterize the current state of technology in the courts?**

The court system is addressing and making advances in technology. It is amazing how far we have come in the last 10 years. Many judges hardly used computers at all, and now they are a

standard item on the bench and in judicial offices. Even beyond the use of computers by judges and judicial officers, we have automated large segments of our court operations. Our court [in Sacramento County] recently started a filing program in which litigants can file small claims actions over the Internet, including paying fees and obtaining waivers of costs.

### **What are some of the challenges in achieving technology goals within the state's court system?**

Unfortunately for the state court system as a whole, over the last few years individual counties have developed varied computer systems. In terms of the 58 counties, today we have a checkerboard of different models that courts have adapted from com-

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mercial products or have developed independently through their own information technology departments and internal court personnel. One of the significant challenges we have in the next few years is to develop greater uniformity of systems. Our goal is not only to save money by not reinventing the wheel in each county or court, but also to provide better service to our customers.

To some extent it is hard to create this kind of uniformity because, understandably, courts have a vested interest in the way they are doing things. But now

with the advent of trial court funding, we are a state court system. We are going to have to break down these artificial barriers if we are to have credibility in the area of technology.

### **What are the challenges in using technology to address case management systems and foster communication among court-related personnel?**

There are many compatibility issues in regard to technology. Within counties, we have to make certain that the district attorney, the probation department, the court, and other county agencies communicate with each other. We also need to make sure that this information is in a form where it can be readily transmitted to the Administrative Office of the Courts and is on a platform consistent with those of other counties.

We have a lot of work to do but recognize that we have a need to address these compatibility concerns. There must be a willingness of everyone involved to commit to the common good and common systems. There is even concern that we may not be able to acquire sufficient state technology funding if we continue to have piecemeal systems.

### **What additional effects could using common systems have on the state courts?**

If we had master contracts for the use and development of software for the entire state, we could secure more cost-efficient pricing than if each county negotiated its own solution. That is not true for everything, but in many cases it is. There are differences in case management systems within counties themselves, but most of the programs available today can be adapted to different local court cultures. For example, in my court tentative rulings are an important function, and we do them in many of our departments. Other counties do not have tentative rulings, but there is no reason why systems should not be able to accommodate both ways of doing business.

### **You are the Judicial Council liaison to the Court Technology Advisory Committee. What is the committee doing to increase technology compatibility throughout the state?**

The Judicial Council, through the Court Technology Advisory Committee, initiated the creation of technology groups made up of individual counties working together to collaborate on common technology issues. For example, to avoid having 58 sep-

arate systems, it was felt that by grouping counties together we could retain as much local control as possible, consistent with the necessary uniformity. The groups are just starting to function, and there are still barriers to be broken down to attain a credible degree of uniformity in the eyes of the Governor, Legislature, and financing agencies.

### **What role has technology played in trial court unification? Has unification created opportunities or problems with court technology?**

First of all, some courts consolidated as early as 1993 in anticipation of unification. Initially, municipal and superior courts in various counties often operated on different systems and had different judicial cultures. A significant part of the technology picture has consisted of reconciling the differences between courts within a county. For example, in our county the municipal court used Wordperfect software and Macintosh computers while the superior court used Microsoft Word and IBM computers.

In large measure, we have reconciled the issue of different systems within a county, and it has been accomplished throughout the state. It is an example of the same kind of "give and take"

that must be accomplished between counties in order to ensure that we are all on the same page.

### **What do you see as the courthouse of the future?**

I see each judge and courtroom being connected to a case management system that allows for the review of case documents on the computer. Our paperless small claims court in Sacramento County permits that now, and many other counties have begun to scan documents into the computer system. Because of technology, judges will have many more resources available to them than before.

### **What specific resources are becoming more available to judges?**

Judges can instantly check records and pull a legal opinion from the computer in the middle of a trial. We can have it on the bench a few minutes after the lawyer gives us the citation. We can go to the California Courts Web site and pull down a rule of court or a decision that was issued the day before by the Supreme Court. Technology is making and will make us better, more efficient judges. ■

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# Drugs, Three Strikes, and Proposition 36

Proposition 36, approved by voters in November 2000, established a radically new approach to the disposition of certain drug offenses. Portions of the new law will affect the application of the three-strikes law.

The statute applies to all felony and misdemeanor nonviolent drug possession offenses. It does not apply to manufacturing crimes or possession of controlled substances for sale. Defendants coming under the new law must be granted probation “notwithstanding any other provision of law.” The conditions of probation must include participation in an appropriate drug treatment program for up to one year and may include vocational training, family counseling, literacy training, and community service. The conditions of probation may not include any incarceration.

Proposition 36 involves the three-strikes law in three circumstances: (1) the initial qualification for sentencing under the new statute, (2) probation violations while serving a sentence under the new statute, and (3) parole of persons having serious or violent felony convictions.

## STRIKE OFFENDERS

If Proposition 36 applies to a felony drug possession conviction, it limits the application of the three-strikes law. A defendant with prior strikes who commits a nonviolent felony drug possession offense will qualify for treatment under the new statute if within the last five years he or she both has remained free of prison custody and has not been convicted of any felony (other than a nonviolent drug possession offense) or of a misdemeanor “involving physical injury or the threat of physical injury to another person.” (Pen. Code, § 1210.1(b)(i).)

The phrase *prison custody* should be used literally; county jail will not disqualify the defendant. The language is similar in legal effect to Penal Code section 667.5 regarding enhancements for prior prison terms.

Misdemeanor offenses “involving physical injury” probably include crimes in which there was any injury, however slight, to the victim—such as under Penal Code section 69, resisting an executive officer—even when injury was not specifically pled and proved. Presumably the exclusion could apply to simple battery in violation of Penal Code section 242.

Far less clear is the application of the law to misdemeanors “involving . . . the threat of physical injury to another person.” The statute probably includes crimes that have as an element an actual threat of injury, such as Penal Code section 245(a)(1), assault with force likely to produce

great bodily injury. Perhaps the statute is broad enough to include misdemeanor violations of Penal Code section 422, making terrorist threats. What of crimes such as brandishing a weapon (Pen. Code, § 417) and driving under the influence of alcohol or drugs (Veh. Code, § 23152), which clearly carry the potential of physical injury? The full meaning of this portion of the statute will require judicial interpretation.

## PROBATION VIOLATIONS

A defendant sentenced under Proposition 36 who violates probation will incur varying consequences depending on the circumstances. If the violation is for a new crime other than nonviolent drug possession or for a non-drug-related condition of probation, the court may revoke probation. Unless certain findings are made, if the violation is based on a new nonviolent drug possession crime or a drug-related condition of probation, the court may not revoke probation until the third violation. If probation is revoked, “the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of” Proposition 36. (Pen. Code, § 1210.1(e).) In the case of defendants with prior strikes, the sentence will be to a state prison for a term computed under the applicable provisions of the three-strikes law.

## PAROLEES

Proposition 36 substantially restricts the court’s ability to revoke a defendant’s parole because of a new nonviolent drug possession offense or a dirty drug test. The restrictions, however, will not apply to any defendant who has a prior serious or violent felony. (Pen. Code, § 3063.1(b)(1).)

## NEW PROCEDURES

Since the provisions of Proposition 36 become operative only with a conviction, the determination of guilt of the underlying offense under the new statute is no different from that of any other crime. Although the initiative does not specify any procedure for determining a defendant’s eligibility under the act, such a decision undoubtedly falls entirely to the court, even as to the nature of any prior conviction that would disqualify the defendant from the benefits of Proposition 36. It is well established that the right to a jury trial on the truth of a prior conviction is entirely a creature of statute; there is no state or federal constitutional right to a jury trial in the proof of a prior conviction. (*People v. Wiley* (1995) 9 Cal.4th 580, 589; *People v. Vera* (1997) 15 Cal.4th 269; *People v. Monge* (1997) 16 Cal.4th 826.) Penal Code sections 969.5 and 1025, which grant the right to a jury trial on prior con-

victions, speak in terms of prior convictions that are “charged” in the accusatory pleading. Nothing in Proposition 36 requires the prosecution to anticipate the defendant’s request for drug treatment and then plead and prove defendant’s ineligibility in front of the trier of fact. Indeed, it is difficult to see how any issue regarding defendant’s eligibility under Proposition 36 can be raised prior to the actual sentencing proceeding. The determination of eligibility of a defendant for treatment relates entirely to the sentencing function of the court.

In determining whether a particular prior conviction disqualifies a defendant from the benefits of Proposition 36, the court should rely only on competent evidence that is part of the “record of conviction.” In some instances, a conviction on its face will bar the defendant. In other situations, the court will be compelled to determine the underlying factual basis of a conviction; only proper evidence should be considered.

The sentencing court must consider a number of alternatives. Should the court grant *Romero* or Penal Code section

17(b) relief “up front” to eliminate the potential application of the three-strikes law if there is a subsequent violation of probation? Or should the court defer such relief to give the defendant the “maximum” incentive to complete rehabilitation? Should the court impose a state prison sentence and suspend its execution, or should the imposition of sentence be suspended? If the defendant later violates probation and it is revoked, should the court grant *Romero* or section 17(b) relief at that time? Section 17(b) relief would be precluded if the court has imposed a state prison sentence and suspended its execution).



Judge J. Richard Couzens

*Judge Couzens is a former member of the Judicial Council and past chair of its Criminal Law Advisory Committee.*



Like any initiative, Proposition 36 has ambiguities that must await court interpretation. Since its provisions do not become operative until July 1, 2001, however, it will take some time to fully determine the extent of its effect on the three-strikes law. ■

## Work Group to Aid in Prop. 36 Implementation

**“Collaboration may be the single most important factor [in] successful implementation of Proposition 36.” *Implementing Proposition 36: Issues, Challenges, and Opportunities*, Legislative Analyst’s Office (December 14, 2000).**

Proposition 36, the statewide initiative that generally prescribes treatment rather than incarceration for nonviolent drug offenses, will substantially change the way the California criminal justice system responds to drug problems. Voters approved the initiative in the November 7, 2000, election, and it takes effect July 1, 2001.

The Judicial Council created the Proposition 36 Implementation Work Group to assist trial courts and ensure effective implementation of the measure. The work group is chaired by Judge Darrell W. Stevens, current chair of the Collaborative Justice Advisory Committee and judge of the Superior Court of Butte County.

“The Judicial Council is committed to working cooperatively with all stakeholders in the criminal justice system to successfully implement this initiative,” says Chief Justice Ronald M. George. “Our goal is to promote the fair administration of justice for all Californians.”

The work group includes representatives of the Governor’s Office, the Legislature, the Attorney General’s Office, and the judicial branch, including appellate justices, drug court judges, drug court coordinators, a district attorney, a public defender, probation services representatives, and others.

By building consensus among these constituent groups, the work group aims to:

- ▼ Develop a set of court/treatment models that will enable trial courts to ensure that services (both discretionary and mandatory) are adequate for successful implementation of the initiative in light of local needs.

- ▼ Provide recommendations to trial courts on the due process, legal, policy, and operational issues related to the initiative.

- ▼ Recommend standards to ensure the high quality of the certified and licensed treatment providers who will assist new clients under the initiative.

- ▼ Refine the estimates of the client population expected to enter the court/treatment system as a result of the initiative.

- ▼ Analyze the initiative’s expected fiscal effects and estimated aggregate costs for the court/treatment system. This analysis will help promote adequate statewide funding to serve both the clients and the public.

- ▼ Recommend to the Judicial Council policy and legislative initiatives to clarify implementation so that the council can work with the executive and legislative branches in developing solutions for the public good.

- ▼ Serve as a clearinghouse for ideas, questions, and comments generated by trial courts and others in the course of preparing for implementation.

The work group held its initial meeting December 21, 2000, in San Francisco. It will complete its tasks by the time Proposition 36 goes into effect on July 1, 2001, but will continue to serve as a resource to ensure continuity and provide assistance to courts for at least the first 90 days after implementation, and longer if required.

- For more information, contact Sandy Claire, Trial Court Programs Division, 415-865-7632, e-mail: sandy.claire@jud.ca.gov.

# Social Security Numbers: Privacy Versus Public Access



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Two bills under consideration by the lame-duck Congress could have major consequences for the record-keeping processes in state courts. Both bills would prohibit the acquisition and display of social security numbers (SSNs) to the public. One, the so-called Amy Boyer’s Law (Sen. 2554), excludes courts, but the other, the Privacy and Identity Protection Act of 2000 (H.R. 4857), specifically includes the judiciary in the prohibition. Even if these two bills do not pass Congress this year, the issue is not going away. This is only the beginning of the effort by Congress to deal with the difficult problem of balancing the right of public access with the public’s demand for privacy.

### POSSIBLE RAMIFICATIONS FOR COURTS

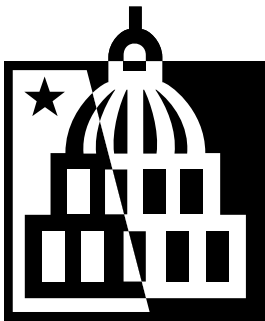
While it is difficult to estimate precisely the impact the SSN prohibition would have on state courts, it can be predicted with confidence that it will impose significant demands on judicial resources.

For decades, some courts have required that SSNs be included in various types of case filings that are ultimately made available to the public. So long as court records were on paper, it was difficult and expensive for anyone to collect these sensitive data. Technology, however, has changed that. Today’s computers can find and compile informa-

tion rapidly and relatively inexpensively. And the Internet makes access possible in everyone’s living room instead of only at the courthouse. Consequently, the conflict that has arisen between freedom of information and the public’s desire to keep information confidential has courts, legislators, and government agencies all struggling for answers.

In recent years, some courts have begun to place records on the Internet, develop data transfer links, participate in electronic filing, and explore other electronic ways to make their records and processes more user-friendly and efficient. The prohibitions in Senate Bill No. 2554 and House Bill No. 4857 will require courts to re-examine the security and data access features of current and future automated systems to ensure that SSNs are not publicly displayed.

Each day, the public makes thousands of requests to open and view physical court records. Under the proposed prohibition, courts would need to develop a plan to redact documents so that SSNs are kept confidential. State courts might need additional staff to meet such an obligation.



## Watch on Washington

### WHY SOCIAL SECURITY NUMBERS?

The public’s concern for privacy with regard to SSNs is not without foundation. Amy Boyer’s legislation is named for a murder victim whose killer purchased her SSN on the Internet and then used it to obtain other personal information. A surge of identity theft cases has added fuel to the public’s growing fear of the misuse of personal information—in particular, social security numbers.

An SSN, the most common piece of information used by perpetrators of identity theft, can be used to commit a number of other criminal acts, including credit fraud and falsification of a criminal offender’s identity. Although SSNs are bought and sold every day on the Internet, the public is especially concerned about the misuse of information that they are legally required to provide to government entities.

### STATUS OF CURRENT LEGISLATION

Since Senate Bill No. 2554, sponsored by Senator Judd Gregg (R-N.H.), did not specifically exempt courts from the SSN prohibition, a legislative change was proposed and made. The bill was then attached to the *Conference Committee Report on the Commerce, Justice, State Appropriations Bill for Fiscal Year 2001 (H.R. 4690)*.

There is strong support for passing SSN legislation without any riders such as amendments

to exempt courts and others from the prohibition. In a letter to the Speaker of the House, President Clinton included this concern in a list of reasons why he might veto House Bill No. 4690. He stated that the bill, as proposed, failed to address real privacy concerns in a meaningful way. At this writing, H.R. 4690 is pending in the lame-duck session of the Congress, which was due to reconvene December 5, 2000.

House Bill No. 4857 is sponsored by Congressman E. Clay Shaw, Jr. (R-Fla.), and specifically includes court documents in the prohibition. It is not expected to pass in this Congress.

Due to the lame-duck session and the delay in resolving the presidential race, the SSN legislation, like many other bills, has become a wait-and-see proposition.

### FUTURE CONCERNS AND CONSIDERATIONS

Although these bills are unlikely to pass in the 106th Congress, they are indicative of what may be proposed in the next Congress. State court leadership should monitor this issue closely, keeping in mind that SSNs may only mark the beginning of legislation directed at protecting sensitive private information. Other information in court records that could be sensitive includes a person’s date of birth, a victim’s address, credit information, health records, arrest records, and so on.

Many state courts are beginning to take a proactive approach by creating commissions to address issues of public access and privacy. At the national level, the Conference of Chief Justices and Conference of State Court Administrators’ Joint Task Force on Privacy and Public Access to Court Records has been asked to report on possible courses of action that state courts may take to address the issue through judicial rules and procedures. ■

## Judicial Election Results

Several contested positions throughout the state required runoffs after the March 7, 2000, judicial elections. Following is a tabulation by county of the results of those runoff elections, held November 7. A total of 18 positions were in contention. Two judges retained their seats, and 16 new judges were elected to fill seats open due to retirement.

County	Incumbent	Winner
Alameda	Benjamin Travis (Ret.)	David Krashna (C)
Butte	Ann H. Rutherford (Ret.) Jerome Warren (Ret.)	James F. Reilley Steve Benson
Fresno	John E. Fitch (Ret.)	Deborah Kazanjian
Los Angeles	L. C. Nunley (Ret.)	John Martinez (I) David Mintz
Mariposa	Richard McMechan (Ret.)	F. Dana Walton
Orange	William Hopkins (Ret.) Claude E. Whitney (Ret.)	Sheila Fell (C) Dan McNerney
Plumas		Garrett Olney (I)
Sacramento	Cecily Bond (Ret.)	Trena Burger
San Benito	Thomas Breen (Ret.)	Steve Sander
San Bernardino	Fred L. Heene, Jr. (Ret.)	Arthur Harrison
San Diego	Federico Castro (Ret.)	Charles Ervin
Santa Clara	Read Ambler (Ret.) Sandra Faithful (Ret.)	Susan Bernardini Margaret Johnson (C)
Solano	Dwight Ely (Ret.)	Cynda Unger
Sonoma	Lloyd Von der Mehden (Ret.)	James Bertoli

(Ret.) = retired (C) = commissioner (I) = incumbent  
Source: California Judges Association

## Commitment to Pro Bono



At a December 14 press conference, representatives from the state and federal court systems joined with the Bar Association of San Francisco (BASF), area law firms, and pro bono legal services agencies to announce a major commitment to increase pro bono services to low-income individuals. BASF President Douglas R. Young (center) was among those who addressed the media.